



The Ethics of the Supreme Court

April 3rd, 2024



The Ethics of the Supreme Court

The Issue (1 of 3)

- As of November 2023, as criticisms arose concerning judicial findings and the behavior of certain justices, the Court produced a “Code of Conduct” consisting of “aspirational rules.” Modeled after the Judge’s Code of Conduct, the code for all except Supreme Court justices, the Supreme Court code consists of five canons meant to acknowledge the relevance of ethics to their conduct. The canons state that a justice should:



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The Issue (2 of 3)

- CANON 1: A JUSTICE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY
- CANON 2: A JUSTICE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES



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The Issue (3 of 3)

- CANON 3: A JUSTICE SHOULD PERFORM THE DUTIES OF OFFICE FAIRLY, IMPARTIALLY, AND DILIGENTLY
- CANON 4: A JUSTICE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF THE JUDICIAL OFFICE
- CANON 5: A JUSTICE SHOULD REFRAIN FROM POLITICAL ACTIVITY



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The Context

- Since 2020 the Court has enjoyed a 6-3 conservative majority. The political polarization that brought it about clouds the Court's independence from politics. Specifically, the checks and balances inherent in ethical inquiry may be ideologically dismissed rather than reasoned out. Hence “aspirational rules” lacking accountability are insufficient responses to the need for a code of ethics



The Question

Should the Supreme Court have a code of ethics that holds its justices accountable?



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The PRO Argument

- A code of ethics gives purpose and direction to the institution that adheres to it
- Such adherence enables the institution to operate independently of the ideological orientations of its members
- If adherence is lacking, enforcement is needed to maintain the institution's independence
- The Supreme Court is an institution that requires such adherence
- Therefore, the Supreme Court should have a code of ethics that holds its justices accountable



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The CON Argument

- The Supreme Court's role is to interpret the US Constitution as it applies to the law & the case at hand
 - With the domination of originalism in the reading of the text there is no opportunity for the application of values, which is where ethics guides our interpretation
 - Example of value applied to ethical judgement in the Georgia County DA affair
- Accountability would require a mechanism for impartial review and judgement of conduct
 - No practical way to duplicate the ethics review process used for Appellate Courts
 - Impeachment has been used twice:
 - Forced resignation of Abe Fortas in 1969 over financial improprieties
 - Failed in Senate in 1804 when used against a "Federalist" justice accused of partisan actions